

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMON RE,

Plaintiff,

v.

No. CIV-08-0447 LCS/WDS

TERRY WAYNE HUSTEAD, and
IRON EAGLE EXPRESS, INC., and
EAGLE EYE LOGISTICS, LLC, and
SENTRY SELECT INSURANCE CO., and
STATE OF NEW MEXICO,

Defendants.

RESPONSE TO PLAINTIFF'S REQUEST TO ENTER DEFAULT
AGAINST EAGLE EYE LOGISTICS, LLC AND
AGAINST SENTRY SELECT INSURANCE COMPANY

Iron Eagle Express, Inc. and Sentry Select Insurance Company, through counsel Miller Stratvert P.A., hereby responds to the Request To Enter Default filed against Eagle Eye Logistics, LLC and the Request To Enter Default against Sentry Select Insurance Company, filed July 7, 2008. For their responses to these Requests To Enter Default, Eagle Eye Logistics and Sentry Select Insurance state as follows:

1. Eagle Eye Logistics filed a timely Answer to the Complaint on June 17, 2008 [Doc 15]. This Answer was filed by co-defense counsel, Raul Sedillo of the Butt Thornton & Baehr Law Firm. Miller Stratvert P.A. entered its appearance on behalf of Eagle Eye Logistics, Sentry Select Insurance, and Mr. Hustead on June 17, 2008.

2. Sentry Select Insurance Company filed a timely Answer to the Complaint on June 17, 2008 [Doc 17], by undersigned counsel.

3. Neither Eagle Eye Logistics nor Sentry Select Insurance is in default in this matter.

4. Eagle Eye Logistics was not involved in this accident and therefore has meritorious defenses to present to Plaintiff's claims. Eagle Eye Logistics will file a motion for judgment on the pleadings because it had no involvement in this accident.

5. Sentry Select Insurance Company is not a proper party to this lawsuit, although it is the insurer for Terry Wayne Hustead who was driving the truck involved in the alleged accident which is the subject of the Plaintiff's Complaint. Mr. Hustead, and therefore Sentry Select, has meritorious defenses to Plaintiff's claims based upon the driving of Plaintiff and Plaintiff's fault in causing the accident. Terry Wayne Hustead and Sentry Select Insurance Company have meritorious defenses to Plaintiff's claims.

6. Pursuant to Federal Rule of Civil Procedure Rule 55(a) the Clerk of the Court should not enter default against either Eagle Eye Logistics or Sentry Select Insurance. Fed.R.Civ.Pro. Rule 55(a). Eagle Eye Logistics and Sentry have pled their defenses and have undertaken their defense of Plaintiff's claims, even if their answers are one day late. *Id.*; *Gross v. Stereo Component Systems, Inc.*, 700 F.2d 120 (3rd Cir.1983)(entering default one day after answer was due was a harsh result where there is no prejudice or culpability). Furthermore, a party who chooses to seek a default and judgment by default must do so by separately filed motions. *See Aztez Municipal Schools Board of Education v. King*, slip opinion, Civ. No. 08-00183 MV/WDS, filed May 23, 2008; Administrative Order 92-88 (requiring all practitioners before the Court to submit a separate pleading for each matter upon which a ruling is sought).

7. The Requests To Enter Default are not based upon any reasonable interpretation of law or fact. No party is currently in default and nothing about the state of the record suggests otherwise. Therefore, Plaintiff should withdraw his Requests To Enter Default, Eagle Eye Logistics and Sentry Select Insurance.

WHEREFORE, in the event that Plaintiff does not voluntarily withdraw the Requests To Enter Default, Eagle Eye Logistics and Sentry Select Insurance respectfully request the Court to deny the Requests To Enter Default and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MILLER STRATVERT P.A.

Electronically filed

By /s/ Thomas R. Mack
THOMAS R. MACK
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2008, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel registered to receive electronic service to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Paul T. Yarbrough
Raul P. Sedillo
Butt Thornton & Baehr, P.C.
**ATTORNEYS FOR DEFENDANTS EAGLE EYE
LOGISTIC, LLC**
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AND I FURTHER CERTIFY that on the 22nd day of July, 2008, I also served the foregoing by First Class U.S. Mail, postage prepaid, on the following persons:

Amon Re
PLAINTIFF, PRO SE
8401 Spain Rd., N.E., Apt. 54C
Albuquerque, NM 87111-2084

/s/ Thomas R. Mack
THOMAS R. MACK